

# TERMS AND CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 **"Supplier"** means Protector Australia Pty Ltd ACN 642 599 83 and its 'related bodies corporate' (as that term is defined in the *Corporations Act 2001* (Cth)) and its successors and assigns.
- 1.2 **"Customer"** means the entity that has contracted with the Supplier to buy Goods and/or Services.
- 1.3 **"Goods"** means any goods supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied) including and in no way limited to, stormwater treatment systems, pollution removal devices and related products.
- 1.4 **"Services"** means any services supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, engineering services.
- 1.5 **"Price"** means the cost of the Goods and/or Services as agreed between the Supplier and the Customer and includes all out of pocket expenses the Supplier incurs on the Customer's behalf subject to clause 6.
- 1.6 **"Terms"** means these Terms and Conditions of Trade

## 2. ACCEPTANCE

- 2.1 Any orders received by the Supplier from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of these Terms.

## 3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms take precedence over any terms and conditions contained in any document provided by the Customer.

## 4. CREDIT FOR BUSINESS PURPOSES ONLY

- 4.1 The Customer expressly warrants and acknowledges that any credit provided to the Customer by the Supplier is to be used for wholly (or predominantly) business purposes.

## 5. PRIVACY POLICY AND CREDIT REPORTING POLICY NOTIFICATION

- 5.1 The Supplier collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at [www.protector.com.au](http://www.protector.com.au). A hardcopy of these policies can also be provided to the Customer free of charge, upon request.
  - 5.1.1 The Privacy Policy sets out: the personal information that the Supplier collects; how the Supplier collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Supplier's management of the information;
  - 5.1.2 The Credit Reporting Policy sets out: the types of credit related personal information the Supplier collects; how it is collected, why it is collected; how the Supplier may use and disclose the credit-related personal information, including the credit reporting bodies to which Supplier is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of the Supplier's management of the credit related personal information.
- 5.2 By the Customer completing the Application for Commercial Credit or providing orders to the Supplier for the supply of Goods and/or Services, the Customer is consenting to the Supplier collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit-related personal information) in accordance with the terms of the Supplier's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

## 6. PRICE

- 6.1 The Price shall be:
  - 6.1.1 if the Supplier has provided a quotation for the relevant Goods and/or Services, as stated on any relevant quotation (subject to clause 9);
  - 6.1.2 as agreed to (in writing) by the Supplier; or
  - 6.1.3 pursuant to the Supplier's current price list (if no quotation has been provided by the Supplier or there has been no agreement by the Supplier (in writing) in respect of the Price)

## 7. PAYMENT

- 7.1 Subject to clause 7.2, payment of the Price, is on any of the follow dates (as determined by the Supplier) which may be:
  - 7.1.1 on delivery of the Goods and/or supply of the Services;
  - 7.1.2 before delivery of the Goods and/or supply of the Services;
  - 7.1.3 the due date specified on the Supplier's invoice;
  - 7.1.4 in the absence of any notification of the due date by the Supplier, it shall be due 30 days from the date of invoice.
- 7.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
  - 7.2.1 there is non-payment of any sum by the due date;
  - 7.2.2 the Customer is bankrupted or enters administration, liquidation or receivership;
  - 7.2.3 there is a change in the financial position of the Customer which materially adversely affects its ability to pay for Goods and/or Services.

- 7.3 Unless prohibited by law, all payments to be made by the Customer to Supplier shall be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever.
- 7.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in the Supplier receiving cleared funds for the entire amount of the negotiable instrument. In respect of cheques, the Supplier will present the cheques within a reasonable time.
- 7.5 The Supplier reserves the right to not accept payment by credit card (including Mastercard, Visa, Diners Club or American Express) as credit card providers will charge the Supplier a merchant fee that is deducted from the payment.
- 7.6 In the event the Supplier does accept payment by credit card, the Customer agrees that it shall be liable to pay the Supplier a surcharge to cover the merchant fees incurred by the Supplier and/or deducted from the payment by the credit card company ("Surcharge").
- 7.7 The Supplier may invoice the Customer for any Surcharge separately to the Goods and/or Services.

## 8. INTEREST AND COSTS

- 8.1 Interest accrues on any amount owing after the due date at the rate of 10% per annum, calculated daily from the first day overdue until payment.
- 8.2 In the event that the Customer breaches any of these Terms, the Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection and legal costs which the Supplier incurs or is liable to pay (including contingently liable to pay), in connection with the enforcement of any and all rights and/or preservation of any and all rights contained in this contract.
- 8.3 For the purposes of clause 8.2, the Customer acknowledges that collection agents' costs may be calculated on a commission basis at a percentage rate of up to 20% of the overdue debt and be contingent upon payment of the Customer's overdue debt (or any portion thereof), irrespective of the amount of work performed by the collection agent before the payment is made. The Customer agrees that it will pay any such commission or fees as liquidated damages on demand when making any payment of the overdue debt or part thereof.

## 9. QUOTATION

- 9.1 Where a quotation is given by the Supplier for Goods and/or Services:
  - 9.1.1 unless otherwise agreed in writing, the quotation shall be valid for no longer than 30 days from the date of issue;
  - 9.1.2 the Supplier reserves the right, until the quote is accepted, to alter the quotation because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its suppliers for products, services, freight and/or insurance.

## 10. RISK TO GOODS AND DELIVERY

- 10.1 Subject to clause 10.5, risk in any Goods shall be deemed to pass to the Customer at the time when the Goods have been either (a) delivered to the Customer or (b) delivered to the delivery address nominated by the Customer ("Nominated Address").
- 10.2 For the purpose of clause 10.1 the Customer agrees and acknowledges that in the event that there is no representative of the Customer present to receive the Goods between the hours of 8:30am and 5:30pm local time (**Office Hours**), it is entirely responsible for any loss, expenses, damages and liabilities occasioned as a result. Under no circumstances shall the Supplier be liable for losses, damages, expenses or liabilities occasioned by the delivery of Goods being made to the delivery address when a representative of the Customer is absent when Goods are delivered to the nominated delivery address.
- 10.3 The Customer expressly acknowledges and agrees that any delivery date given by the Supplier as the delivery date for Goods is an estimate only and not a constitute contractual term or legally binding representation, since the Supplier is reliant upon third parties to supply Goods by any nominated delivery date. Accordingly, the Supplier shall not be liable for any loss or damage (howsoever arising) to the Customer or any third party if the Goods are not delivered by a nominated delivery date.
- 10.4 The cost of freight and insurance to the point of the delivery address shall be at the Customer's expense and shall form part of the Price.
- 10.5 Where the Customer arranges freight to its nominated location, risk in any goods shall pass when its nominated agent/carrier collects the Goods from the Supplier.
- 10.6 The Customer is responsible for unloading the Goods at the point of delivery.
- 10.7 The Supplier may charge a reasonable storage fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.

## 11. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

### Goods

- 11.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with the Supplier until it has received payment in full for all monies owed by the Customer.
- 11.2 Until the Supplier has received payment in full for all monies owed by the Customer, the Supplier reserves the following rights:
  - 11.2.1 legal and beneficial ownership of the Goods;

- 11.2.2 the right to enter the Customer's premises (as the Customer's invitee) to retake possession of the Goods;
  - 11.2.3 the right to keep or resell any Goods repossessed under sub-clause 11.2.2; and
  - 11.2.4 any other rights it may have at law or under the PPSA.
- 11.3 Where, pursuant to sub-clause 11.2.3:
- 11.3.1 the Supplier resells the Goods repossessed, it is agreed that the Supplier shall credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
  - 11.3.2 the Supplier retains possession of the repossessed Goods, it is agreed that the Supplier shall credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 11.4 The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods (unless the action taken to repossess the Goods was grossly negligent or constituted wilful misconduct).

- 11.5 If the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to the Supplier as security for the full satisfaction by the Customer of the full amount owing between the Supplier and the Customer.
- 11.6 Until the Supplier receives payment for Goods in full, the Customer acknowledges that the Supplier has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Supplier.

#### **General**

- 11.7 Upon assenting to these Terms, the Customer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA.
- 11.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Supplier asks and considers reasonably necessary for the purposes of:
- 11.8.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
  - 11.8.2 enabling the Supplier to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by the Supplier.
- 11.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- 11.9.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - 11.9.2 redeem the Goods under section 142 of the PPSA;
  - 11.9.3 reinstate this Agreement under section 143 of the PPSA;
  - 11.9.4 receive a Verification Statement.
- 11.10 Nothing in clause 11 prevents the Supplier from taking collection or legal action against the Customer to recover any monies owed from time to time.

## **12. DISPUTES**

- 12.1 The Customer must, within 7 days of the relevant Goods and/or Services being provided, raise any issue associated with incomplete, damaged, incorrect or substandard quality and/or late supply (**Complaint**). The Customer acknowledges this 7-day timeframe ensures the Supplier can make contemporaneous enquiries and investigations about the issue and its causes.
- 12.2 In the event a Complaint is made, the Customer must, upon request of the Supplier, allow the Supplier's nominated representative to attend the premises where the Goods are located or, in the case of Services involving workmanship, where the workmanship was done, in order to inspect the Goods and/or the workmanship (as the case may be).
- 12.3 If the Customer fails to give notice of any claim within the 7 day period specified in clause 12.1 and/or fails to allow the Supplier to inspect the Goods and/or workmanship in accordance with clause 12.2, then, to the extent permitted by law, the Goods and/or Services (if involving workmanship) are deemed to be accepted by the Customer.

## **13. LIMITATION OF LIABILITY & INDEMNITY**

- 13.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 ("CCA") are expressly excluded to the extent permitted by law.
- 13.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Supplier's liability is limited, at its option, to anyone or more of the following:
- 13.2.1 repairing the Goods
  - 13.2.2 the costs of repairing the Goods;
  - 13.2.3 the replacement or supply of the equivalent of the Goods; or
  - 13.2.4 the payment of the costs of replacing the Goods or acquiring their equivalent.

- 13.3 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then the Supplier's liability is limited at its option to:

- 13.3.1 supplying the Services again; or
- 13.3.2 the payment of the costs of supplying the Services again.

- 13.4 Subject to the Customer's rights under Schedule 2 of the CCA:

- 13.4.1 the Supplier shall not be liable for any loss or damage of any kind whatsoever, arising from the Goods and/or Services, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods and/or Services; and
- 13.4.2 the Customer shall indemnify the Supplier against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Supplier or otherwise, brought by any person in connection with any matter, act, omission, or error by the Supplier, its agents or employees in connection with the Goods and/or Services.

## **14. CANCELLATION OF ORDERS**

- 14.1 Subject to clause 14.2, orders placed with the Supplier cannot be cancelled by the Customer without the written approval of the Supplier. In the event that the Supplier accepts the cancellation of any order placed, it is agreed that the Supplier shall credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 14.2 Where the Customer orders any Goods from the Supplier that the Supplier does not have in stock, such that the Supplier is required to order the Goods from a third party (known as a "Special Buy-In"), the order is non-cancellable by the Customer, unless the third party itself is prepared to credit the Supplier for the cancelled Special Buy-In in which case the Supplier shall credit the Customer's account with the invoice value (as rendered to the Customer) less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

## **15. SUPPLIER NOT OBLIGED TO SELL ON CREDIT TERMS**

- 15.1 The Supplier is not obliged to sell on credit terms and reserves the right to require cash on delivery before the Goods and/or Services are provided.

## **16. SECURITY AND CHARGES**

- 16.1 The Customer hereby charges in favour of the Supplier all of the Customer's estate and interest in any real property (whether held in its own right or in the capacity as trustee) that the Customer now has, or which it may later acquire any such interest in, with payment of all moneys owed by the Customer to the Supplier now and in the future and hereby consents to the Supplier lodging a caveat or caveats which note the Supplier's interest.
- 16.2 The Customer also charges all of its present and after-acquired personal property with payment of all moneys owed by the Customer to the Supplier now and in the future.
- 16.3 Where the Customer has previously granted a charge, mortgage and/or other security interest to the Supplier in any previous agreement, that charge, mortgage and/or security interest will continue, and shall be in addition to and separate from the charges and security interests created in this agreement, they and shall secure all indebtedness and obligations of the Customer under this Agreement.
- 16.4 The Supplier will not seek to enforce the charges in clause 16.1, 16.2 and 16.3 unless it reasonably holds the view that there will still be a shortfall on recovery under its retention of title rights in clauses 11.1, 11.2 and 11.3.

## **17. JURISDICTION**

- 17.1 These terms and conditions and all matters concerning the business relationship between the Supplier and the Customer shall be governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State for the conduct of any litigation.
- 17.2 The parties agree that any contract between the Customer and the Supplier is formed at the Supplier's address.

## **18. MISCELLANEOUS**

- 18.1 This agreement constitutes the entire agreement between the parties relating to its subject matter. All previous negotiations, representations and understandings are merged into this agreement. No oral representation or information provided by the Supplier constitutes a legally binding representation, contractual term or collateral agreement.
- 18.2 Failure by the Supplier to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this agreement.
- 18.3 If any provision of this contract shall be invalid, void or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 18.4 Any variation to the Terms must be agreed to in writing to have any legal effect.
- 18.5 If an order is placed as an agent of a principal (whether disclosed or undisclosed) both the agent and the principal shall be joint and severally liable to pay for the Goods and/or Services and the relevant contracts shall be governed by these Terms.